

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

S.C. JOHNSON & SON, INC.,

Plaintiff,

v.

Case No. 2:10-cv-00681-CNC

TRANSPORT CORPORATION OF
AMERICA, INC., ET AL.,

Defendants.

**STEVENS TRANSPORT, INC.'S
MOTION TO DISMISS THE AMENDED COMPLAINT**

ORAL ARGUMENT REQUESTED

Pursuant to Fed. R. Civ. P. 12(b)(6), Stevens Transport, Inc. (“Stevens Transport”) respectfully requests that the Court dismiss the Amended Complaint filed by S.C. Johnson & Son, Inc. (“SC Johnson”) in its entirety, with prejudice, because it fails to state any legally cognizable claim. As set forth in more detail in the accompanying memorandum filed with this motion, the grounds for this motion are as follows:

1. Stevens Transport is a trucking company that provided shipping services for SC Johnson until 2005. (Dkt. No. 66 (“Am. Compl.”) ¶¶ 11, 54, 55.) Years after that relationship ended, SC Johnson alleges that it paid Stevens Transport above-market transportation rates and received unnecessary services from Stevens Transport. This Court dismissed all five of SC Johnson’s claims in its original complaint because they were preempted by the Federal Aviation Administration Authorization Act of 1994 (“FAAAA”) and also held that Count V (aiding and abetting breach of fiduciary duty) was time barred. (Dkt. No. 49 at 15, 17.)

2. The Seventh Circuit Court of Appeals affirmed in part and reversed in part. *S.C. Johnson & Son, Inc. v. Transport Corp. of Am., Inc.*, 697 F.3d 544, 561 (7th Cir. 2012). It affirmed dismissal on the basis of FAAAAA preemption with respect to SC Johnson's claims sounding in fraud. *Id.* It reversed, however, with respect to SC Johnson's claim for conspiracy to commit commercial bribery and its claim under the Wisconsin Organized Crime Control Act ("WOCCA") and remanded the case to this Court for further proceedings. *Id.*

3. On December 31, 2012, SC Johnson filed its Amended Complaint, which removed the time-barred claim and the claims that the Seventh Circuit upheld as preempted, and added new allegations. (Dkt. No. 66.) Specifically, SC Johnson's Amended Complaint asserts two causes of action: racketeering under the Wisconsin Organized Crime Control Act ("WOCCA") and civil conspiracy to violate Wisconsin's criminal commercial bribery statute.

4. SC Johnson's WOCCA claim bears several basic deficiencies, each of which independently require dismissal. Specifically, the claim fails to allege a pattern of racketeering activity suggestive of a threat of future racketeering activity, attempts to conflate the WOCCA "enterprise" with the WOCCA "victim," and relies on predicate acts that are variously facially inapplicable, preempted, and under-pled under both the basic notice pleading standards and the heightened pleading standards of Rule 9(b).

5. With regard to its claim of conspiracy to commit commercial bribery, SC Johnson fails to make allegations that plausibly suggest such an entitlement to relief. SC Johnson rests its case for bribery on factual allegations that are entirely consistent with lawful business conduct and on conclusory allegations that are not entitled to a presumption of truth. Even if such allegations were sufficient (which they are not), SC Johnson's claim must be dismissed because

Wisconsin's criminal bribery statute is not civilly actionable and it does not properly allege the existence of a conspiracy.

WHEREFORE, Stevens Transport respectfully requests that the Court grants its motion and dismiss SC Johnson's Amended Complaint in its entirety, with prejudice, as it does not state any claim upon which relief can be granted.

Dated: January 21, 2013

Respectfully submitted,

/s/ James A. White

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CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following at their email address on file with the Court:

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I further certify that on January 21, 2013, I caused one copy of the foregoing to be served by U.S. Mail on the following:

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Dated: January 21, 2013

/s/ James A. White

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